

Montana Water Court
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FILED
09/30/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0959-R-2024
Stern, Anika
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Jerry D. Hanley; Jamie L. Hanley; Connie J.
Hyde; Niki K. Hyde; Peggy J. Twedt

CASE 41S-0959-R-2024

41S 28144-00
41S 135584-00
41S 135585-00
41S 135586-00
41S 135587-00
41S 135588-00
41S 30123669
41S 30123670

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41S 28144-00, 41S 135584-00, 41S 135585-00, 41S 135586-00, 41S 135587-00, 41S 135588-00, 41S 30123669, and 41S 30123670 are owned by variations of the following owners: Jerry D, Hanley, Jamie L. Hanley, Connie J. Hyde, Niki K. Hyde, and Peggy J. Twedt

2. Claims 41S 28144-00, 41S 135584-00, 41S 135585-00, 41S 135586-00, 41S 135587-00, 41S 135588-00, 41S 30123669, and 41S 30123670 were decreed with Montana Department of Natural Resources (DNRC) issue remarks, all issue remarks must be resolved.

3. Claim 41S 28144-00 was decreed with the following issue remark:

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The remark explains that DNRC modified the means of diversion during reexamination of claim 41S 28144-00.

4. Claims 41S 135584-00, 41S 135585-00, 41S 135586-00, 41S 135587-00, and 41S 135588-00 were decreed with the following DNRC issue remark:

THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The DNRC did not provide information explaining why the point of diversion issue remark was placed on the claims.

5. Claims 41S 30123669 and 41S 30123670 were decreed with an issue remark explaining that they were not included in the 1984 decree in this Basin.

6. No objections were filed.

PRINCIPLE OF LAW

1. The Water Court must address all issue remarks decreed a claim. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

CONCLUSION OF LAW

1. The issue remarks decreed on claims 41S 139440-00, 41S 139442-00, and 41S 139445-00 are not supported by evidence sufficient to overcome the prima facie status afforded the point of diversion of the claim.

2. The means of diversion issue remark (41S 28144-00) and exempt claim issue remarks (41S 30123669 and 41S 30123670) decreed on some claims in this Case are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The issue remarks should be removed from the claims in this Case with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jerry D. Hanley
Jamie L. Hanley
PO Box 851
Lewistown, MT 59457

Niki K. Hyde
c/o Connie J. Hyde
614 Virginia St
Lewistown, MT 59457

Connie J. Hyde
602 Virginia St
Lewistown, MT 59457

Peggy J. Twedt
c/o Connie J. Hyde Et al.
614 Virginia St
Lewistown, MT 59457

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 28144-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMIE L HANLEY
PO BOX 851
LEWISTOWN, MT 59457-0851

JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: JUNE 15, 1965

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 2.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: WARM SPRING CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	6	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SESENE	6	16N	20E	FERGUS

Total: 0.50

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 135584-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: SEPTEMBER 19, 1892

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.25 CFS

Volume: 453.61 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESE	31	17N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SW	5	16N	20E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 135585-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: MARCH 29, 1882

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 9.00 GPM

Volume: 7.26 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESW	5	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SW	5	16N	20E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 135586-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: MAY 20, 1905

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.25 CFS

Volume: 453.61 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4	SWNW	5	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SW	5	16N	20E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 135587-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

Priority Date: MAY 11, 1905

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 2.50 CFS

Volume: 907.22 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6	E2NE	6	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SW	5	16N	20E	FERGUS
2			SESW	5	16N	20E	FERGUS
3			W2SE	5	16N	20E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 135588-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

CONNIE J HYDE
602 VIRGINIA ST
LEWISTOWN, MT 59457

NIKI K HYDE
C/O CONNIE J HYDE
614 VIRGINIA ST
LEWISTOWN, MT 59457

PEGGY J TWEDT
C/O CONNIE J HYDE ET AL
614 VIRGINIA ST
LEWISTOWN, MT 59457

Priority Date: AUGUST 31, 1881

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.25 CFS

Volume: 453.61 AC-FT

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED,
IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENW	5	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSW	5	16N	20E	FERGUS
2			NESE	6	16N	20E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 30123669 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: JAMIE L HANLEY
PO BOX 851
LEWISTOWN, MT 59457-0851

JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

***Priority Date:** DECEMBER 31, 1883

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 4.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	13	NWNESE	6	16N	20E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00	13	NWNESE	6	16N	20E	FERGUS

Total: 1.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 30123670 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JAMIE L HANLEY
PO BOX 851
LEWISTOWN, MT 59457-0851

JERRY D HANLEY
PO BOX 851
LEWISTOWN, MT 59457

***Priority Date:** DECEMBER 31, 1883

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: WARM SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	13	NWNESE	6	16N	20E	FERGUS

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

***Period of Use:** JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		13	NWNESE	6	16N	20E	FERGUS